

VOTING SYSTEMS AND PROCEDURES PANEL
CALIFORNIA SECRETARY OF STATE'S OFFICE
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February 20, 2004

Mr. Robert Urosevich, President
Diebold Election Systems, Inc.
1611 Wilmeth Road
McKinney, TX 75069

Dear Mr. Urosevich:

On January 15, 2004, I sent you a letter requesting ten categories of documents to be delivered to us no later than February 15, 2004. My request was made pursuant to one of the specific conditions on which the Diebold AccuVote TSx was conditionally certified last November that Diebold cooperate with the VSP.

Late on Friday, February 13th, 2004, materials were hand delivered to Marc Carrel, Vice Chair of this panel, in the Secretary of State's Los Angeles office. Accompanying the materials was a transmittal letter from Daniel D. McMillan, of the law firm Jones Day. This letter explained which of the requested materials were included and, to our disappointment, which documents you failed to provide.

In fact, in reviewing the documents, it is apparent that you completely failed to provide any documents in response to our requests for one category of documents and only partially complied with our request for two other categories of documents. We are both frustrated and troubled by your failure to timely comply with our request.

First, no items were provided to comply with Item #5, our request for “all information available which clarifies the implementation of software which was neither federally qualified or state certified when it was used for an election.” The transmittal letter from your counsel, Mr. McMillan, explains that “this request theoretically could require a review of all DESI correspondence since January 2001,” and that “DESI is working on this request and attempting to develop a reasonable approach to collecting potentially responsive documents, and will further discuss with you this category next week...” Mr. Urosevich, this is no time for lawyerly hair-splitting. Your firm unlawfully installed software, or modifications to software, on voting systems all over the State of California. You need to provide to us all documents containing information that clarifies how and why this unlawful installation occurred.

Second, you failed to provide all responsive documents to Item #3, which sought “all federal qualification and state certification documentation of each version of software, hardware, and firmware that was installed in each client county.” Mr. McMillan’s letter explained that while the documents collected to date have been provided, DESI is collecting additional documents. It seems highly unusual, indeed disturbing, to us that you would not have all of the certification and qualification documents on Diebold software and hardware readily available, and that your company was not able to provide it all in a timely manner.

Finally, in response to Item #8, which sought “documentation regarding any modification to the Windows CE program for use on the TS/TSx platforms” Mr. McMillan’s transmittal letter stated that:

“Windows CE is configured for use in DESI’s TS and TSx platforms. Configuration includes installation of drivers for specific hardware components (e.g., display touch screens) and identification of other hardware elements (e.g., memory and processor devices) used in the platforms.”

Let me be clear: This vague and obtuse statement is no substitute for actually providing responsive documents. For example, no explanation is offered for failing to provide the very driver software or documentation to which this statement refers.

Finally, our frustration and disappointment with your response was compounded by the fact that, literally on the eve the response was due, your counsel sent a vague and overly broad proposed confidentiality agreement. That proposed agreement purports to allow Diebold to designate as “confidential information” any information that, in its view, “reflects” information that Diebold treats as “confidential business information.” We are particularly concerned about the terms of this proposed agreement in light of the fact that your counsel, and our chief counsel, have crafted a much narrower and better-defined confidentiality agreement governing your submission of your TSx source code to our independent tester.

Mr. Urosevich, let me be both frank and clear: We expect full compliance with all of our requests for documents no later than close of business on Wednesday, February 25, 2004. If you contend that any documents responsive to our January 15 request are exempt from public disclosure, you must provide a detailed privilege log that clearly specifies each such document, and for each document you must provide a full explanation of the legal basis for your assertion of confidentiality. Finally, you must provide a proposed confidentiality agreement that is closely modeled on the one prepared in connection with our request for the TSx source code. Again, both the document log and an acceptable confidentiality agreement are due no later than close of business on February 25, 2004.

Sincerely,

/s/

Mark L. Kyle, Chair

cc: Marc Carrel
Randy Riddle
Marvin Singleton